

UNITED STATES
v.
ERNEST HIGBEE ET AL.

IBLA 76-440

Decided January 9, 1981

Motion to remand case to the Nevada State Office, Bureau of Land Management, to determine whether the Gravel Pit No. 5 placer mining claim was null and void ab initio. Motion to strike. N 5753.

Motion to remand granted; motion to strike denied.

1. Administrative Authority: Generally- Mining Claims: Determination of Validity--Secretary of the Interior

The Secretary of the Interior is charged with seeing that valid mining claims are recognized, invalid ones eliminated, and the rights of the public preserved.

2. Mineral Lands: Leases--Mineral Leasing Act: Generally --Mining Claims: Generally--Multiple Mineral Development Act: Generally--Oil and Gas Leases: Generally

The grant of an oil and gas permit under the Mineral Leasing Act, 30 U.S.C. § 181 (1976), prior to the location of a mining claim in 1929 precludes, as long as the permit is in force, the appropriation of land therein included under the mining laws.

3. Mining Claims: Patent--Patents of Public Lands: Generally

If the record does not contain sufficient evidence to persuade the Secretary or his authorized officers that the law has been complied with, the Department cannot

legally grant the gratuity which claimants request, i.e., issuance of a mineral patent.

APPEARANCES: Burton J. Stanley, Esq., Office of the Solicitor, Sacramento, California, for contestant; James G. Armstrong, Esq., Thorndal, Gentner, Backus, Lyles & Maupin, Las Vegas, Nevada, for contestees.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

This case has had a long and involved career. It originated with a contest complaint, issued October 1, 1962, charging no discovery of a valuable mineral deposit. Following a hearing, the Hearing Examiner issued his decision on November 25, 1963, declaring the Gravel Pit Nos. 5 and 9 placer mining claims null and void. On appeal, the Department ordered a new hearing. United States v. Higbee, A-30348 (August 26, 1965). Following the second hearing, the Hearing Examiner again declared the mining claims null and void, which decision was affirmed by the Department, United States v. Higbee, A-31063 (April 1, 1970). This decision was affirmed by the United States District Court for Nevada, but, on appeal, the Court of Appeals for the Ninth Circuit by "Memorandum" in Higbee v. Morton, 72-2406 (July 22, 1974), remanded the matter for a new hearing on the issue of marketability. Following that hearing, an Administrative Law Judge held the Gravel Pit No. 9 claim to be null and void, but recommended that the complaint against the Gravel Pit No. 5 placer mining claim be dismissed.

Thereafter, on November 2, 1978, counsel for the Government moved to remand the case to the Nevada State Office, Bureau of Land Management (BLM), for issuance of a decision declaring the Gravel Pit No. 5 placer mining claim null and void ab initio. This motion is based upon the assertion that the lands at issue were not open to location of mining claims on the date of location because such lands were within an oil and gas prospecting permit, duly issued under the Mineral Leasing Act, 30 U.S.C. § 181 (1976). The claim at issue was located on February 13, 1929. Counsel for contestees moved to strike the Government's motion.

[1] The Department of the Interior has plenary authority over the administration of the public lands, including mineral lands, and the Secretary of the Interior has broad authority to issue regulations concerning them. Best v. Humboldt Placer Mining Co., 371 U.S. 334 (1963). The Secretary of the Interior is charged with seeing that valid mining claims are recognized, invalid ones eliminated, and the rights of the public preserved. Palmer v. Dredge Corp., 398 F.2d 791 (9th Cir. 1968), cert. denied, 393 U.S. 1066 (1969); Duguid v. Best, 291 F.2d 235 (9th Cir. 1961), cert. denied, 372 U.S. 906 (1963).

[2] The grant of an oil and gas permit under the Mineral Leasing Act precludes, as long as the permit is in force, the appropriation of land therein included under the mining laws. H. Leslie Parker, 54 I.D. 165, 173 (1933); Filtrol Co. v. Brittan and Echart, 51 L.D. 649, 653 (1926); Joseph E. McClory, 50 L.D. 623, 626 (1924). See also letter from Secretary Work to Hon. Charles L. Richards, House of Representatives, dated October 9, 1924, at 50 L.D. 650. 1/

Similarly, land which, in 1946, was included in an oil and gas lease issued under the Mineral Leasing Act was not subject to mining location and, in the absence of a showing of compliance with the Acts of August 12, 1953, 30 U.S.C. § 501 (1976), or of August 13, 1954, 30 U.S.C. § 521 (1976), mining claims located on such land are invalid. Clear Gravel Enterprises, Inc., 64 I.D. 210 (1957).

Failure of the mining claimants to comply with the redemption provisions of the Acts of August 12, 1953, or of August 13, 1954, is not excused by BLM's failure to notify them of the availability of those provisions. Dorothy Smith, 39 IBLA 306 (1979). See also Dorothy Smith, 44 IBLA 25 (1979), and Charles House, 42 IBLA 364 (1979).

The authority of the United States to enforce a public right or to protect a public interest, including the rights to cancel an invalid mining claim which encumbers public land, is not vitiated or lost by acquiescence of officers or agents of the Government by their laches or delays in performance of their duties. Dorothy Smith, 39 IBLA 306 (1979).

[3] If the record does not contain sufficient evidence to persuade the Secretary or his authorized officers that the law has been complied with, the Department cannot legally grant the gratuity which claimants request, that is, issuance of a mineral patent. United States v. New Jersey Zinc Co., 74 I.D. 191 (1967).

In this case, as the record is not clear that the claimants have complied with the law regarding their location, it is appropriate to remand the record to BLM for a determination of the rights of the claimants to the Gravel Pit No. 5 placer mining claim.

Accordingly, the motion of the Government to have the case remanded is granted, and the motion of the contestees to strike is denied.

1/ In 1954 Congress passed the Multiple Mineral Development Act, 30 U.S.C. §§ 521-531 (1976), which authorized the location of mining claims on public lands which had previously been segregated from mineral entry by the Mineral Leasing Act.

Therefore, pursuant to the authority delegated to the Interior Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the case is remanded to the Nevada State Office, Bureau of Land Management, for a determination of the validity of the location of the Gravel Pit No. 5 placer mining claim.

Douglas E. Henriques

Administrative Judge

We concur:

James L. Burski
Administrative Judge

Edward W. Stuebing
Administrative Judge

